



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1269]

Certain Electrolyte Containing Beverages and Labeling and Packaging Thereof; Notice of Commission Request for Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to request written submissions from the parties, interested government agencies, and interested persons, under the schedule set forth below, on remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On July 6, 2021, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337"), based on a complaint filed by CAB Enterprises, Inc. of Houston, Texas and Sueros y Bebidas Rehidratantes, S.A. de C.V. of Mexico (collectively, "Complainants"). *See* 86 FR 35532-33 (July 6, 2021). The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electrolyte containing beverages and labeling and packaging thereof by reason of infringement of U.S. Trademark Registration Nos. 4,222,726;

4,833,885; 4,717,350; and 4,717,232 (collectively, “the Asserted Trademarks”). *See id.* The notice of investigation names the following respondents (all of Mexico): (1) Carbonera Los Asadores de C.V.; Comercial Treviño de Reynosa, S.A. de C.V.; Distribuidora Mercatto S.A. de C.V.; H & F Tech International S.A. de C.V.; Leticia Angélica Saenz Fernandez; Yoselen Susana Martinez Tirado; Grupo Comercial Lux del Norte S.A. de C.V.; and Caribe Agencia Express, S.A. de C.V. (collectively, “the Defaulting Respondents”); and (2) Flexicompuestos S.A. de C.V.; Comercializadora Degu S.A. de C.V.; MPC Foods S.A. de C.V.; Myrna Guadalupe Perez Martinez; Comercializadora Embers S.A. de C.V.; and Manuel Bautista Nogales (collectively, “the Remaining Respondents”). *See id.* The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *See id.*

On September 14, 2021, and April 7, 2022, the presiding administrative law judge (“ALJ”) issued initial determinations (Order Nos. 8 & 19) finding the Defaulting Respondents in default pursuant to Commission Rule 210.16 (19 CFR 210.16), for failure to respond to the complaint and notice of investigation and to orders to show cause (Order Nos. 7 & 9). *See* Order No. 8 (Sept. 14, 2021), *unreviewed by* Comm’n Notice (Oct. 6, 2021); Order No. 19 (Apr. 7, 2022), *unreviewed by* Comm’n Notice (Apr. 26, 2022).

On April 6, 2022, Complainants filed a motion for partial termination of the investigation as to the Remaining Respondents based on the withdrawal of the allegations in the complaint as to those respondents under 19 CFR 210.21(a). On April 7, 2022, OUII filed a response in support of the motion.

On April 18, 2022, Complainants filed a declaration under Commission Rule 210.16 (19 CFR 210.16) requesting the immediate entry of limited exclusion orders against the Defaulting Respondents. Complainants also indicated pursuant to 19 CFR 210.16(c)(2) that they are not seeking a general exclusion order. No response to Complainants’ declaration was received.

Commission Rule 210.16(c)(1) provides that “[a]fter a respondent has been found in default by the Commission, the complainant may file with the Commission a declaration that it is

seeking immediate entry of relief against the respondent in default” and “[t]he facts alleged in the complaint will be presumed to be true with respect to the defaulting respondent.” *See* 19 CFR 210.16. In addition, “[t]he Commission may issue an exclusion order, a cease and desist order, or both, affecting the defaulting respondent only after considering the effect of such order(s) upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers, and concluding that the order(s) should still be issued in light of the aforementioned public interest factors.” *See id.*

Accordingly, the Commission has determined to request written submissions from the parties, interested government agencies, and interested persons, under the schedule set forth below, on remedy, the public interest, and bonding. More specifically, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm’n Op. at 7-10 (Dec. 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove, or take no action on the

Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainants are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are further requested to provide the HTSUS numbers under which the accused products are imported, and to supply the names of known importers of the products at issue in this investigation.

Written submissions and proposed remedial orders must be filed no later than close of business on **June 10, 2022**. Reply submissions must be filed no later than the close of business on **June 17, 2022**. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 Fed. Reg. 15798 (March 19, 2020). Submissions should refer to the investigation number ("**Inv. No. 337-TA-1269**") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for

which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant(s) complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

The Commission's vote for this determination took place on May 27, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 24, 2022.

Lisa Barton,

Secretary to the Commission.

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